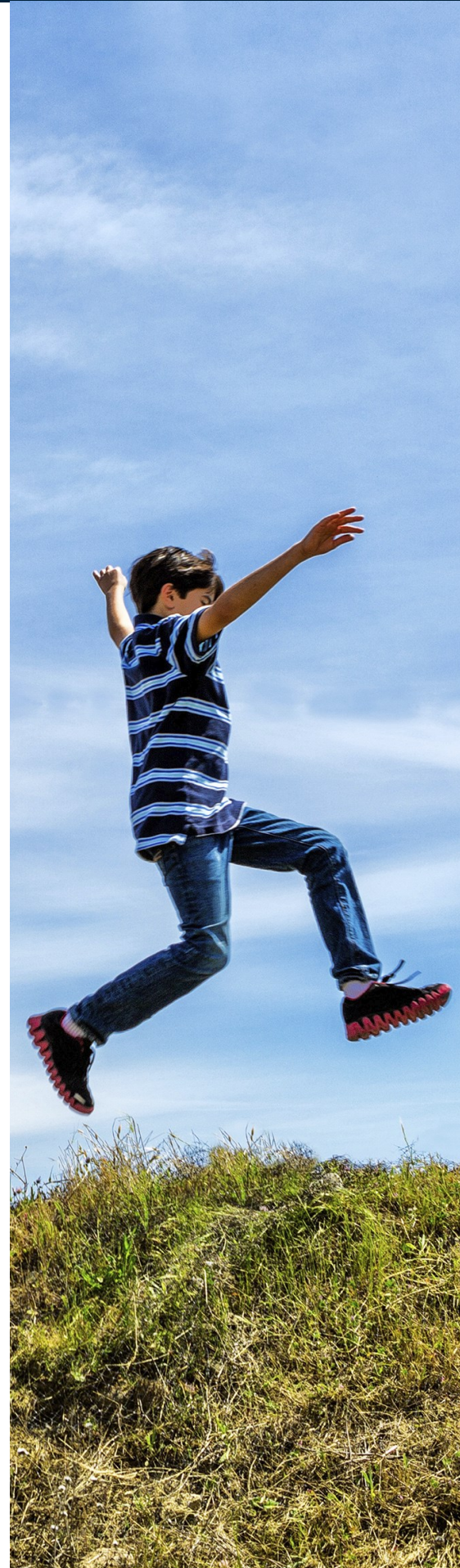


Evaluation and Retention of Child Neglect Referrals

Office of Performance Evaluations
Idaho Legislature





Office of Performance Evaluations

Established in 1994, the legislative Office of Performance Evaluations (OPE) operates under the authority of Idaho Code §§ 67-457–464. Its mission is to promote confidence and accountability in state government through independent assessment of state programs and policies. The OPE work is guided by professional standards of evaluation and auditing.

Joint Legislative Oversight Committee 2021–2022

The eight-member, equally bipartisan Joint Legislative Oversight Committee (JLOC) selects evaluation topics; OPE staff conduct the evaluations. Reports are released in a public meeting of the committee. The findings, conclusions, and recommendations in OPE reports are not intended to reflect the views of the Oversight Committee or its individual members.

Senators



Mark Harris



Dave Lent



Michelle Stennett



Dave Nelson

Representatives



Ilana Rubel



Caroline Nilsson Troy



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Senator Mark Harris (R) and Representative Ilana Rubel (D) cochair the committee.

From the director

August 30, 2021

Members
Joint Legislative Oversight Committee
Idaho Legislature

Good public policy in the child protection arena balances children's need for safety and parental rights. The state must manage inherent conflicts and tensions while conducting investigations and making determinations whether a child has been maltreated through abuse or neglect.

Managing these tensions requires good record retention policies and clear statutory definitions for child maltreatment.

We hope this report will allow policymakers to understand how the department makes decisions about child neglect referrals. We recommend strengthening record retention criteria and timelines in the department's child welfare data management system. We also point to statutory language that policymakers may wish to amend to clarify under what circumstances state intervention is justified.

We appreciate the assistance of Health and Welfare officials in conducting this study.



Sincerely,

A handwritten signature in blue ink that reads "Rakesh Mohan". The signature is fluid and cursive.

Rakesh Mohan, Director
Office of Performance Evaluations



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**Formal
responses from
the Governor and
the Department
of Health and
Welfare are in
the back of the
report.**



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Executive summary



Evaluation purpose

Child protection interventions can bring into conflict child safety, parents' rights, and the state's obligation to protect children. Policies and practices that affect this balance are in constant tension and can be a significant source of conflict. Legislators asked us to report on the following potential sources of conflict:

- Collection and maintenance of information about individuals reported for alleged neglect

- Practices and policies for evaluating reports of neglect

Collection and maintenance of information about individuals reported for alleged neglect

For practical necessity and legal requirements, child protection programs collect and retain information about families referred for services. Policies and practices for collecting and retaining case records affect the balance between department interests and the interests of families. We found multiple potential sources of conflict regarding the collection and maintenance of information.

The department uses information from all previous referrals when evaluating new referrals of maltreatment.

The department's practice standard for intake and screening emphasizes that social workers should consider all previous

Individuals have the right to request their information from the department.

The department is never required to expunge child protection records.

referrals when deciding whether to accept a new referral for safety assessment. A pattern of maltreatment in referral and case history records may indicate a cumulative risk. In that instance, a new referral can be assigned for safety assessment, even when it does not meet the other criteria.

Through our review of child protection cases, we found that prior referrals were not often the primary reason the department assigned a safety assessment. Although referral history is not often the primary reason, because of the large number of referrals, the history can influence the department's decisions for a substantial number of families.

The department is not required to notify families who have been reported for child maltreatment but were screened out before a safety assessment.

Any referral that does not meet the statutory definition for maltreatment is not assigned a safety assessment. For these cases, neither statute nor administrative rule requires the department to notify the individuals involved that there was a referral. As a result, the department does not notify those individuals.

Individuals have the right to request their information through an established departmental process. However, some individuals would not know that a referral had been made and would have no reason to make an information request without notification from the department. Maintaining records that families are unaware of but can be used against them in the future is the source of some tension and lack of trust among families, stakeholders, and the department.

We did not find any states that have requirements, criteria, or practices for informing individuals about referrals of child maltreatment that were screened out and not assigned for safety assessment.

Idaho is one of only a few states that keep families' information indefinitely in a child welfare data management system.

Idaho has no policy on timeframes or criteria for expunging files from the department's child welfare data management system. The department is never required to expunge records stored in

the system. As a result, the department has no process in place for individuals to challenge and expunge reports, investigations, and histories of maltreatment maintained in its child welfare data management system.

We found that many states have policies limiting the amount of time such referrals can be maintained in the department's data management system before they must be deleted.

Recommendation

Policymakers should clarify and strengthen Idaho's laws for child protection records by establishing criteria and timelines for when records must be deleted from the department's child welfare data management system. By establishing criteria and timelines, policymakers can align Idaho policy with practices common across the nation and reduce the opportunity for old or unfounded referrals to affect families adversely.

Practices and policies for evaluating reports of neglect

The statutory definitions of neglect, abuse, and abandonment determine whether the department will investigate a family following a referral. Some legislators were concerned that the statutory definition of neglect used in child protective actions was broad or vague as compared to the definitions for abuse or abandonment. As a result, legislators asked three questions: (1) is there any regional variation in how the department handles referrals for neglect, (2) is neglect a necessary standard for child maltreatment, (3) and how have other states have defined neglect?

We found no significant regional variation in processes for evaluating reports of child neglect.

A centralized intake unit in Boise processes all reports of child maltreatment. Social workers in the central intake unit assess each referral to determine whether the allegations meet the statutory definitions of neglect, abuse, or abandonment. As a result, there is virtually no regional variation in intake processes or decisions. The department transitioned from a regional intake system to a centralized intake system in the fall of 2012.

Many states have policies limiting the amount of time referrals can be maintained.



States have no clear consensus as to what should be included in the definition of neglect.



Idaho is among states with the most limited definitions of neglect.

Most states' definitions of neglect include references to medical care, food or nutrition, abandonment, shelter, and clothing. In addition, states commonly include the threat of harm in definitions of neglect. Beyond these basic elements of neglect, states have no consensus as to what should be included in the definition of neglect. Idaho Code § 16-1602(31) considers neglect to be a failure to provide "proper parental care and control, or subsistence, medical or other care necessary" for the child's well-being.

In a 2018 study of states' legal definitions of neglect, Idaho was classified as having a minimal definition of neglect.¹ The study characterized minimal definitions as the least expansive definitions that usually focus only on physical neglect. Minimal definitions tend to limit social worker discretion in the decision-making process. About 80 percent of states with minimal definitions require demonstration of actual or imminent harm to children before intervention is justified. The study classified fifteen states as having minimal definitions, including Idaho and neighboring states Utah and Wyoming.

Options for further action.

If policymakers would like to further investigate potential changes to the statutory definition of neglect, we suggest that the newly established Child Protection Legislative Oversight Committee and the restructured citizen review panels are best equipped to assess whether Idaho's statutory definition of neglect is operating as intended.

Through long-term scrutiny of case records, the review panels can provide information about how statutory definitions of neglect, abuse, and abandonment operate in practice. Policymakers can then more accurately determine whether reality reflected in case records aligns with the community's values and preferences as expressed through statutorily established definitions.

1. Rebecca Rebbe, "What is Neglect? State Legal Definitions in the United States," *Child Maltreatment* 23, 3 (2018): 303–315.

Policymakers could clarify Idaho’s statutory definitions for child maltreatment.

Based on our review of other states, we found only one aspect of Idaho’s definition of maltreatment that falls outside the range generally seen in other states. Idaho Code § 16-1603(1)(b) allows the court to find jurisdiction under the Child Protection Act for children “whose parents or other legal custodians fails to provide a stable home environment.”

The statute is unclear in at least three ways. First, the statute does not further define “failure to provide a stable home environment.” Second, the statute is unclear about what acts or omissions would fall under unstable home environment but would not fall under neglect, abuse, or abandonment as described in subsection 1603(a). Finally, unstable home environment is not included in the statutory definitions of maltreatment that apply to department practices or decision making.

This vague statute allows the court to find jurisdiction for a broader and arguably less serious set of acts or omissions than what the department will consider for intake, screening, and investigation decisions. As a result, the standards used to determine child maltreatment are inconsistent and depend on the path by which families are brought to the attention of the child protection system.

Policy options

Option 1: Policymakers could clarify child protection statute by removing the term “failure to provide a stable home environment.”

Option 2: If policymakers want to keep the term “failure to provide a stable home environment” as a criterion for court jurisdiction, policymakers could clarify child protection statute by further defining the term and including references in the child protection statutes relevant to the department.

Vague statute allows the court to act on a broader set of conditions than what the department would normally investigate.

1

Introduction

Background and legislative interest

Child protection interventions can bring into conflict child safety, parents' right to the care and custody of their children, and state interests. In addition, child protection investigations can have lasting negative effects on children and parents, even if children are not removed from their home or no evidence of maltreatment is found. Although no states have eliminated the conflict, carefully crafted policy can reduce unnecessary tension and conflict.

After our third report in a series of child protection reports, legislators raised questions about policies and practices that affect the balance between parents' rights and the Department of Health and Welfare's obligation to protect children. Policies and practices that affect the balance between parents' rights and protecting the safety of children are in a constant state of tension and can be a significant source of conflict. Legislators asked us to report on the following potential sources of conflict:

- Collection and maintenance of information about individuals reported for alleged neglect

- Practices and policies for evaluating reports of neglect

Evaluation approach

This evaluation responds to specific questions raised in the legislative request for evaluation (see appendix A). The answers supplement our previous three child protection reports:

[Child Welfare System \(2017\)](#)

[Representation for Children and Youth in Child Protection Cases \(2018\)](#)

[Child Welfare System: Reducing the Risk of Adverse Outcomes \(2018\)](#)

The child protection system has changed significantly since we released the first child protection report in 2017. Specifically, the Child Protection Legislative Oversight Committee was established, and citizen review panels have been restructured and started large-scale case reviews. Given the specialized focus of the committee and the panels, we designed this evaluation to inform and complement their work. Our scope is in appendix B. Details about the evaluation methodology are in appendix C.



2

Collecting and retaining family data

For practical necessity and legal requirements, child protection programs collect and retain information about families referred for services. The Department of Health and Welfare uses a data management system to store information about nearly every aspect of a child protection case from initial referral until the case is closed. In addition to information for management of active cases, the department uses old referrals and case records when evaluating new referrals.

Policies and practices for collecting and retaining case records affect the balance between department interests and the interests of families. The department has an interest in collecting and preserving information about families involved in active, and possibly future, child maltreatment allegations. Families have an interest in not having old or unsubstantiated reports of maltreatment preserved.

To determine how the department collects, preserves, and uses information about families reported to the department for child maltreatment, we reviewed state statute and department policies, interviewed department staff, analyzed department data, and analyzed a sample of child protection referrals.



The department uses information from all previous referrals when evaluating new referrals of maltreatment.

The department's practice standard for intake and screening emphasizes that social workers should consider all previous referrals when deciding whether to accept a new referral for safety assessment. A pattern of maltreatment in referral and case history indicates a cumulative risk. In that instance, a new referral can be assigned for safety assessment, even when it does not meet the other criteria. When considering referral and case history, social workers are directed to pay attention to five points:

- Multiple referral sources
- Reason for referrals
- Whether referrals were substantiated
- Time between referrals
- Effectiveness of any previous services from the department's Child and Family Services

The department provided us with a sample of 60 referrals: 30 assigned for a safety assessment and 30 screened out and not assigned for a safety assessment. We systematically reviewed each of the referrals to assess what information the department collects and how it uses the information.

We found that in all new referrals, social workers had identified any available prior referrals. The number of prior referrals we found for each new referral ranged from 0 to 35 and averaged 6 per referral. On average, case histories spanned about 5.7 years. However, in some cases, records went back 12 or more years.

Although referral history was considered in all cases, cumulative risk based on referral history was explicitly cited by social workers as an influential factor in only two referrals assigned for safety assessment.² One case had 35 prior referrals, including one prior referral that resulted in termination of parental rights. The other case had nine prior referrals including one recent referral

2. Although not a decision by social workers, in a third case, law enforcement cited a combination of the present circumstances and the family's history with the department and with law enforcement as the reason for declaring the child in imminent danger.

If there is a cumulative risk, a referral can be assigned for safety assessment when it does not meet the other criteria.

On average, case histories spanned about 5.7 years but some histories went back 12 or more years.

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alleging homelessness and physical abuse (none of the nine prior referrals had been substantiated).

Findings from our case review show that case history can be informative for evaluating referrals, but it is most often not the primary reason for referrals being assigned for safety assessment. Although not often the primary reason referrals are assigned for safety assessment, case history kept by the department can affect a substantial number of families. Assuming the findings from our case review are consistent for all 23,108 referrals the department evaluated in fiscal year 2019, case history would have been an influential factor in assigning nearly 800 cases for safety assessment.



The department is not required to notify families who have been reported for child maltreatment but were screened out before a safety assessment.

Legislators asked about the rights of parents to be informed of any history, reports, or referrals of maltreatment maintained in department files, and whether the department has processes in place to notify parents of this information. We interviewed department staff, reviewed statute, and reviewed administrative rule to identify requirements to notify families, processes for notifying families, and rights of parents to be informed of reports or referrals of maltreatment involving them.

All individuals have the right to request their own information through an established departmental process. As long as an individual makes a formal written request, the department is required to provide individuals with the information it keeps about them. The department does not initiate the process on its own. As a result, some individuals would not know that they were referred to the department for child maltreatment and would not have reason to request this information.

Referrals assigned for safety assessment

When the department receives a referral, social workers interview the referring party to collect relevant facts. Social workers then evaluate the alleged facts to determine whether the facts meet the statutory definitions for maltreatment including neglect, abuse, or abandonment. The department received 23,108 referrals in fiscal year 2019.

If the facts alleged in the referral meet statutory definitions for maltreatment, or if any adult in the home has been convicted of lewd and lascivious conduct or felony injury to a child in the past, social workers must conduct a safety assessment. In fiscal year 2019, the department assigned 11,562 referrals for safety assessment. In cases assigned for safety assessment, the department is obligated to notify families that they are being investigated and the reason why. We found that the department's practice of notifying individuals in cases assigned for safety assessment generally aligns with federal requirements and practices in other states.

Some families would not know that they were referred to the department for child maltreatment.

11,546
 referrals did not
 meet statutory
 definitions for
 child
 maltreatment in
 fiscal year 2019.

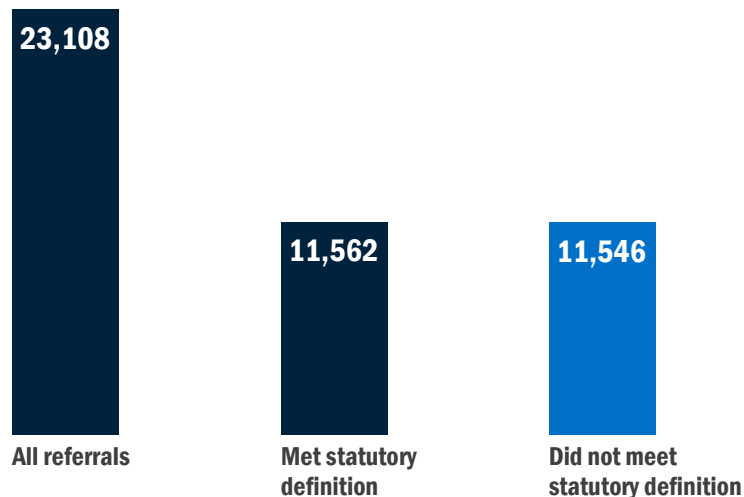
Referrals screened out and not assigned for safety assessment

Any referral that does not meet the statutory definition for maltreatment is not assigned for a safety assessment. For these cases, neither statute nor administrative rule require the department to notify individuals that there was a referral involving them. As a result, the department does not notify those individuals and has no process for doing so.

The department received 11,546 referrals that did not meet statutory definitions and were not assigned for safety assessment in fiscal year 2019. Exhibit 1 compares the number of referrals assigned for safety assessment with those not assigned for assessment.

Exhibit 1

Nearly half of referrals **did not meet the state's definitions for child maltreatment.**



Source: 2019 annual report

In cases where referrals are screened out and families are not notified that they were the subject of a referral, the referral is still documented in the department's data management system. The department uses the referral documentation to determine cumulative risk and help evaluate the need for a safety assessment if the department receives another referral involving the family in the future. Maintaining records that families are unaware of but can be used against them in the future is the

source of some tension and lack of trust among families, stakeholders, and the department.

We did not find any states that have requirements, criteria, or practices for informing individuals about referrals of child maltreatment that were screened out and not assigned for safety assessment. However, we found that many states have policies limiting the amount of time such referrals can be maintained in the department's data management system before they must be deleted.



Maintaining records that families are unaware of but can be used against them may fuel tension and lack of trust.

Idaho had no timeframes or criteria for expunging files from the department's data system.

Idaho was one of only six states that did not have expungement regulations.

Idaho is one of only a few states that keep families' information indefinitely in a child welfare data management system.

Administrative rule says the department may destroy physical files after five years. However, Idaho has no policy on timeframes or criteria for expunging files from the department's child welfare data management system. The department is never required to expunge records stored in the system.

No state or federal statute, rule, or standard requires the department to have such a process in place for the type of child welfare data management system used. As a result, the department has no process in place for individuals to challenge and expunge reports, investigations, and histories of maltreatment maintained in its child welfare data management system.

The department's practice of preserving case records indefinitely can help social workers assess cumulative risk based on a family's referral and case history. However, according to a 2018 report by the US Children's Bureau, Idaho was one of only six states that did not have expungement regulations.³

For example, two of Idaho's neighboring states, Utah and Washington, have statute and rule that clearly specify when records maintained in management information systems like the department's child welfare data management system can or must be deleted.

Utah requires deletion of any reference in the management information system to a referral with the following criteria:

- Determined by the division to be without merit if no subsequent referral involving the same person has occurred within one year

- Determined by a court to be unsubstantiated or without merit if no subsequent referral involving the same person has occurred within five years

3. Child Welfare Information Gateway. (2018). "Review and expunction of central registries and reporting records." Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.

Washington requires its department to destroy all records with the following criteria:

- A screened-out referral within three years from the receipt of the referral
- An unfounded or inconclusive report within six years of completion of the investigation, unless a prior or subsequent, substantiated referral has been received

Recommendation

In legislative committees, stakeholders and legislators have raised concerns about the department's maintenance and use of old files as criteria for investigating families, the length of time the department maintains records, and the department's family notification practices.

Through our case review we found that prior referrals were not often the primary reason the department assigned referrals for safety assessment. We also found that referral history can influence a substantial number of department decisions that affect families. In addition, we found that the department keeps records of all referrals, including those that are screened out. Idaho is one of only a few states that has not established criteria and timelines for expunging case records after a reasonable time period.

Policymakers should clarify and strengthen Idaho's laws for child protection records by establishing criteria and timelines for when records must be deleted from the department's child welfare data management system. By establishing criteria and timelines, policymakers can align Idaho policy with practices common across the nation and reduce the opportunity for old or unfounded referrals to affect families adversely.

Policy tradeoff

Establishing criteria and timelines could limit the range of case history available for the department to use when evaluating cumulative risk for new referrals. The degree to which available case history would be limited depends on the specific criteria and timelines specified by policymakers.



The central registry is different from the child welfare data management system.

Federal and state statutes require due process and an administrative hearing process for the Child Protection Central Registry.

When social workers investigate a referral and discover evidence of child maltreatment, parents' names are recorded in the department's Child Protection Central Registry. The central registry is different from the child welfare data management system.

The child welfare data management system is designed for internal use by the department to manage ongoing child protection cases and storing related information. In contrast, the registry is required by statute and is designed to disseminate information including risk levels assigned to each incident where maltreatment has been substantiated. The primary purpose of the registry is to assist in protecting children from individuals who have previously maltreated children.

Nationally, the Child Abuse Prevention and Treatment Act (CAPTA) sets requirements that all states must follow to receive a federal grant. One requirement is for states to submit a plan for expunging records under certain circumstances. This requirement applies to Idaho's Child Protection Central Registry but not to its child welfare data management system. The requirement applies to the central registry because it is used for employment or other background checks unlike the child welfare data management system. If records are maintained in a system that is used for background checks, the plan must include provisions and procedures for expunging records of unsubstantiated or false cases of child maltreatment.

In Idaho, the department has responded to the CAPTA requirement by establishing extensive administrative rule. The department's rule, like nearly all states, specifies processes for the following:

- Notification of individuals

- Individuals challenging substantiation findings

- Administrative reviews

- Retention periods

- Individuals requesting for their name to be removed from the registry after a specified retention period has passed

In fiscal year 2019, the department received 235 requests for an administrative review from individuals challenging the department's substantiation finding. Results of the review were as follows:

- 17 reversed the substantiation decision and the individual's name was not placed on the central registry

- 115 upheld the individual's name being placed on the central registry but modified the type of maltreatment, level of maltreatment, or the rationale for the decision

- 103 had no change to the substantiation decision and no change to the type of maltreatment, level of maltreatment, or rationale for the decision

If an individual prevails in an administrative review, the individual's name and substantiation will not appear on the central registry, but the case information will still be maintained in the data management system.

Even when names are removed from the central registry, related case records are maintained in the data management system.

3

Receiving and evaluating referrals

Child maltreatment investigations are disruptive to families and can have a lasting impact on parents and children, even when social workers find no evidence of maltreatment. For example, the suddenness and stressfulness of investigations can be traumatic for children and parents. Parents face the possibility of having their children removed from their home or may fear being stigmatized for being the subject of an investigation.

The statutory definitions of neglect, abuse, and abandonment determine whether the department will investigate a family following a referral.

In fiscal year 2019, Idaho's Child and Family Services received 23,108 referrals for alleged child maltreatment.

Of those 23,108 referrals, reported facts in 7,925 referrals met the statutory definition of neglect, 2,230 met the statutory definition for physical abuse, and 775 met the statutory definition for sexual abuse. The remaining 12,178 referrals did not provide information that met the statutory definition for neglect or abuse. Those cases were recorded in the data management system for information only, and the department took no further action.

Given the impact child protection involvement can have on families, some legislators were concerned that the statutory definition of neglect used in child protective actions was broad or vague as compared to the definitions for abuse or abandonment. As a result, legislators asked whether there is any regional variation in how the department handles referrals for neglect, whether neglect is a necessary standard for child maltreatment, and how other states have defined neglect.

We found no significant regional variation in processes for evaluating reports of child neglect.

A centralized intake unit in Boise processes all reports of child maltreatment. Social workers in the central intake unit assess each referral to determine whether the allegations meet the statutory definitions of neglect, abuse, or abandonment.

The department transitioned from a regional intake system to a centralized intake system in the fall of 2012. As a result, there is virtually no regional variation in intake processes or decisions. To further minimize variation among social workers, the department has used inter-rater reliability assessments to measure the agreement or consistency among social workers' screening decisions.

We conducted a review of 60 referrals received by the central intake unit in 2019, which included comparing the process documented in each referral by region. Although the degree of documentation varied somewhat from one case to another, our analysis showed no patterns that indicated the process for evaluating reports of child neglect varied significantly by region.



Neglect, in the context of child protection, does not have a standard definition.

Idaho is among states with the most limited definitions of neglect.

Child maltreatment is an umbrella term for neglect, physical abuse, sexual abuse, emotional abuse, abandonment, and substance abuse. The actions or conditions that constitute maltreatment are defined in federal law, state law, and agency policies.

Some legislators have expressed concern that Idaho's definition of neglect is vague and have asked whether neglect is a necessary standard for child maltreatment.

Neglect in the context of child protection does not have a standard definition. States are expected to establish statutes and rules defining abuse and neglect that adhere to the minimum standard established in federal law. Federal law sets the minimum standard for neglect and abuse:

Any recent act or failure to act of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse, or exploitation

An act or failure to act which presents an imminent risk of serious harm

Regardless of whether states explicitly use the term neglect, all states' definitions for child maltreatment are expected to specify acts or omissions that threaten the safety of children. The CAPTA Reauthorization Act of 2010 deliberately replaced the term "abuse" with the term "abuse and neglect." The 2010 changes show that CAPTA intends negligent acts or omissions to be considered in state definitions even if states do not use the term neglect when defining child maltreatment.

Nationally, the US Children's Bureau identifies five most commonly recognized types of neglect:

Physical neglect: abandoning the child or refusing to accept custody; not providing for basic needs like nutrition, hygiene, or appropriate clothing

Medical neglect: delaying or denying recommended health care for the child

Inadequate supervision: leaving the child unsupervised, not protecting the child from safety hazards, not providing adequate caregivers, or engaging in harmful behavior

Emotional neglect: isolating the child, not providing affection or emotional support, or exposing the child to domestic violence or substance abuse

Educational neglect: failing to enroll the child in school or homeschool, ignoring special education needs, or permitting chronic absenteeism from school

Most states' definitions of neglect include references to medical care, food or nutrition, abandonment, shelter, and clothing. In addition, states commonly include the threat of harm in definitions of neglect. Beyond these basic elements of neglect, states have no consensus as to what should be included in the definition of neglect. Idaho Code § 16-1602(31) considers neglect to be a failure to provide "proper parental care and control, or subsistence, medical or other care necessary" for the child's well-being.

A 2018 study of states' legal definitions of neglect found that definitions fall within three categories.⁴

Minimal definitions are the least expansive and usually focus only on physical neglect. Minimal definitions tend to limit social worker discretion in the decision-making process. About 80 percent of states with minimal definitions require demonstration of actual or imminent harm to children before intervention is justified.

Cornerstone definitions generally include lack of medical care, inadequate food, shelter, and supervision. Cornerstone definitions were more likely than minimal definitions to include substance-exposed infants and exposure to maladaptive environments. In nearly 90 percent of cornerstone definitions, threat of harm was sufficient to justify intervention.

Expanded definitions are the most expansive and are more likely to include emotional neglect and exposure to drug activity. Expanded definitions tend to allow social workers to take a more comprehensive approach to evaluating neglect. Threat of harm to children is usually sufficient to justify intervention.

States do not agree about what should be included in the definition of neglect.

Idaho was classified as having a minimal definition of neglect.

4. Rebecca Rebbe, "What is Neglect? State Legal Definitions in the United States," *Child Maltreatment* 23, 3 (2018): 303–315.



In the study, Idaho was classified as having a minimal definition of neglect. Fifteen states including Idaho and neighboring states Utah and Wyoming have minimal definitions. In contrast, five states including Idaho's neighboring state Washington have expanded definitions. The remaining states had cornerstone definitions.

Despite a wide variety of definitions for neglect or the threshold for intervention, all states, to some degree, struggle to balance the rights of parents with the safety of children and community values. Each state's definition of neglect is an expression of the community's values and preferences.

Option for further action

If policymakers would like to further investigate potential changes to the statutory definition of neglect, we suggest that the newly established Child Protection Legislative Oversight Committee and the restructured citizen review panels are best equipped to assess whether Idaho's statutory definition of neglect is operating as intended.

Through long-term scrutiny of case records, the review panels can provide information about how statutory definitions of neglect, abuse, and abandonment operate in practice. Policymakers can then more accurately determine whether reality reflected in case records aligns with the community's values and preferences as expressed through statutorily established definitions.



Policymakers could clarify Idaho's statutory definitions for child maltreatment.

Based on our review of other states, we found one aspect of Idaho's definition of maltreatment that falls outside the range generally seen in other states.

Idaho Code § 16-1603(1)(b) allows the court to find jurisdiction under the Child Protection Act for children “whose parents or other legal custodians fails to provide a stable home environment.” The statute is unclear in at least three ways. First, the statute does not further define “failure to provide a stable home environment.” Second, the statute is unclear about what acts or omissions would fall under unstable home environment but would not fall under neglect, abuse, or abandonment as described in subsection 1603(a). Finally, unstable home environment is not included in the statutory definitions of maltreatment that apply to department practices or decision making.

This vague statute allows the court to find jurisdiction for a broader and arguably less serious set of acts or omissions than what the department will consider for intake, screening, and investigation decisions.

As a result, the standards used to determine child maltreatment are inconsistent and depend on the path by which families are brought to the attention of the child protection system.

For example, if law enforcement encountered children who were not abused but regularly witnessed domestic violence, law enforcement could declare the children to be in imminent danger. If the children were declared in imminent danger, they would be removed from the home. Once children are removed, the court must hold a shelter care hearing and then possibly an adjudicatory hearing.

If a judge determined, based on the unstable home environment standard, that the children came within the jurisdiction of the court, the children could remain in foster care and the case would proceed through the child protection process.

In contrast, if the same circumstances had been reported to the child protection central intake unit and not law enforcement, the

Statute is unclear about the difference between unstable home environment and neglect.



report would not have met the department's intake criteria based on the statutory definition of maltreatment. Because the reported facts did not meet the criteria for maltreatment, the referral would likely have been screened out and the children would not have been removed from their home.

We make no judgment as to whether the children in the example should have been removed from the home. The example simply illustrates the inconsistency that can result from the statutory definitions for maltreatment.

Policy options

Option 1: Policymakers could clarify child protection statute by removing the term “failure to provide a stable home environment.”

Option 2: If policymakers want to keep the term “failure to provide a stable home environment” as a criterion for court jurisdiction, policymakers could clarify child protection statute by further defining the term and including references in the child protection statutes relevant to the department.



Request for evaluation





House of Representatives

State of Idaho

March 10, 2018

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Statehouse
Boise, ID 83820

Re: OPE Evaluation Request 2018

Dear Mr. Mohan:

There is a tension in investigations by H & W into child neglect / abuse between protecting children vs. overstepping parental rights. Complaints about abuse made to the Department can range from very serious to false and manipulative. There is concern about inconsistency from investigator to investigator and region to region, and also about transparency and standards for investigation. Negligence as used in child protective actions is a broad term, see section 16-1602(31), Idaho Code, as compared to "abused" or "abandoned". There is concern about to what extent H & W keeps an internal list of reports of neglect and how those reports are recorded and historically catalogued and for how long. I would be interested in an evaluation of DHW processes in regard to investigations of families regarding neglect and the standards used to initiate those investigations, pull children from homes, and transparency in how records are kept.

Some potential questions would be:

1. What DHW processes surround the handling of referrals for child neglect? Are they based upon statute, rules, policies or other standards?
2. What information is logged when a complaint for neglect is received and how is that information used in the determination of future decisions on investigations of families and parents of children and the removal of a child from the family?
3. What rights to parents have to know what history of reports or allegations of neglect are maintained in DHW files?
4. What variations if any exist across Idaho in the application or implementation of statute, rules, policies and procedures with regard to when to investigate a report of neglect? What factors contribute to any variability or consistency across Idaho?
5. What processes exist for parents / families to know about, challenge and expunge reports, investigations and history of neglect maintained by DHW that do not result in the removal of a child from their home?
6. Do policies on these issues in Idaho differ significantly from other states?

Yours truly,

A handwritten signature in black ink, appearing to read "Lynn M. Luker", is written over a horizontal line.

Lynn M. Luker
Representative
District 15

Evaluation scope



This evaluation is intended to clarify or expand several aspects of child neglect and record keeping that were not the focus of our three previous child protection evaluations.

Neglect

1. What are the Department of Health and Welfare's processes for handling referrals for child neglect? Are they based upon statute, rules, policies, or other standards?
 - What variations, if any, exist across Idaho in the application or implementation of statute, rules, policies and procedures about when to investigate a report of neglect?
 - What factors contribute to any variability or consistency across Idaho?
2. To what extent is neglect a necessary standard for child maltreatment?
3. How have states defined neglect in the context of child maltreatment?

Record keeping

4. What information is logged when the department receives a complaint for neglect?
 - How does the department use the information to determine future decisions on investigations and removal?
5. What rights do parents have to know what history, reports, or allegations of neglect are maintained in department files?
 - What processes are in place for parents or families to know what records are being maintained by the department for allegations that did not result in the removal of a child?
6. What process are in place to challenge and expunge reports, investigations, and history of neglect?
7. Do policies on these issues differ significantly from other states?



Methodology

The questions we were asked to answer were not well suited to an evaluation methodology that relied heavily on analysis of agency data. Instead, we used a variety of methods to provide the most relevant information available, including:

- Interviews with department staff

- Review of federal, state and agency policies including federal statute and guidance, state statute, administrative rule, and department practice standards

- Analysis of department administrative data for child protection referrals and for administrative reviews and outcomes

- Review of research literature about how neglect is defined

- Review of other states policies for defining neglect and policies for specifying a timeframe after which the department must remove or deidentify case files that meet specific criteria

- Analysis of documentation from a sample of 60 referrals

For our analysis of documentation, the department provided us with a sample of 60 referrals: 30 assigned for a safety assessment and 30 screened out and not assigned for a safety assessment. We systematically reviewed each of the referrals to assess what information the department collects and how it uses the information.

Responses to the evaluation



Your report fittingly identifies the challenges the Idaho Department of Health and Welfare faces in managing the health and safety of Idaho's children while protecting parental rights when evaluating child protection reports.

—Brad Little, Governor



[T]here is a fine balance between the state's efforts to ensure the safety and protection of children and parents' rights. . . The department stands ready and willing to support policymakers in their review of the recommendations and the policy options your report provides.

**—Dave Jeppesen, Director
Department of Health and Welfare**





BRAD LITTLE
GOVERNOR

August 18, 2021

Rakesh Mohan, Director
Office of Performance Evaluations
954 W. Jefferson St.
Boise, ID 83702

Via e-mail: rmohan@ope.idaho.gov

Dear Director Mohan:

Thank you for your office's work related to the important issue of child protection referrals in the state. Idaho's children are our greatest asset, and their health and safety has been a top priority of mine as Governor.

Your report fittingly identifies the challenges the Idaho Department of Health and Welfare (IDHW) faces in managing the health and safety of Idaho's children while protecting parental rights when evaluating child protection reports. These are not easy tasks, but I have complete confidence in IDHW Director Dave Jeppesen and his team's ability to manage these difficult situations and implement any OPE recommendations that are adopted.

Again, thank you for work on this important issue and I stand ready to work with stakeholders across the state to build the best child welfare system possible.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brad Little", is written over a horizontal line.

Brad Little
Governor of Idaho



IDAHO DEPARTMENT OF
HEALTH & WELFARE

BRAD LITTLE – GOVERNOR
DAVE JEPPESEN – DIRECTOR

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June 2, 2021

Rakesh Mohan, Director
Office of Performance Evaluations
954 W. Jefferson St.
Boise, ID 83702
Via Email: rmohan@ope.idaho.gov

Dear Director Mohan:

I want to thank you and your staff for the time and effort spent on your office's report on the Evaluation and Retention of Child Neglect Referrals. I greatly appreciate the work your staff put into analyzing the complex policy issues related to collecting and retaining child protection referrals, the practices and policies utilized by the department in evaluating reports of neglect, as well as the state's statutory definition of neglect.

As your report highlights, there is a fine balance between the state's efforts to ensure the safety and protection of children and parents' rights. Historical referrals and case records are utilized when determining response on a new referral, and this information can impact whether a report is assigned for safety assessment. The report also raises valid questions about the potential for historical referrals and unfounded assessments to adversely affect families.

The department stands ready and willing to support policymakers in their review of the recommendations and the policy options your report provides.

I once again would like to thank you for your time and your commitment to improving Idaho's Child Welfare System.

Sincerely,

DAVE JEPPESEN
Director

DJ/ap

